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In The

Supreme Court of the United States

October Term, 1979

NO. 79-708

PHILADELPHIA FOOD STORE EMPLOYERS' LABOR COUNCIL,

Petitioner,

VS.

RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCALS 1349, 1357, 1358, 1360, 1361, 1371 and 1393,

Respondents.

BRIEF OF LOCAL 1357 IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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The Respondents, Retail Clerks International Association, Local 1357, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Third Circuit's decision in this case for the reasons stated herein.

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Should not this Court deny certiorari where there is no real conflict between the Circuits as to the application of the standards of judicial review of labor arbitration awards set forth in United States Steelworkers vs. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960), and where the decision below was rendered in absolute conformity with those principles, the Petition in this case being in fact nothing more than a request to review alleged errors in the decision below.

COUNTERSTATEMENT OF THE CASE

The underlying action was brought by the Petitioners in the United States District Court for the Eastern District of Pennsylvania pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C., §185, to vacate an arbitration award issued by Arbitrator Lewis M. Gill, issued in response to an expedited grievance and arbitration procedure filed by the Union Respondents herein. The grievance contended that the shutdown of the Acme and A & P facilities as a result of a labor dispute between Acme, A & P and Food Fair, which constituted the Philadelphia Food Store Employers Labor Council and another Union, the Meatcutters, was a lockout of the Retail Clerk employees.

On or about March 6, 1977, a strike was called against Food Fair by the Meatcutters Retail Joint Council of Philadelphia and Vicinity, which was negotiating a new Contract with A & P, Acme and Food Fair, participating members of the Philadelphia Food Store Employers Labor Council which was negotiating with the Meatcutters as a multi-employer bargaining unit. The dispute with the Meatcutters

came about as a result of the expiration of their Collective Bargaining Agreement. The Meatcutters announced that their strike action would only be against Food Fair, but even though the Employers were aware of that situation, and although no strike action by the Meatcutters occurred at Acme and A & P, on or about March 9, 1977, Acme and A & P also closed down their stores locking out not only their employees in the Meatcutters bargaining unit, but locking out the employees in the Retail Clerks bargaining unit as well. The Retail Clerks employees had in fact honored the picket lines of the Meatcutters at Food Fair, but were fully prepared, ready and willing to continue working at Acme and A & P. At the time that Acme and A & P shut down their stores locking out all of their employees, the Contract between the Retail Clerks and the Employers was in full force and effect (not expiring until January 21, 1978), that Contract giving the Retail Clerks the right to respect the picket lines of another Union at the stores without it being considered a violation of the Contract. It is also clear that no dispute existed on March 9, 1977, between the Retail Clerks and any of the Companies.

The issue of whether or not Acme and A & P violated the no lockout provision of the Council's Agreement with the Retail Clerks by closing their stores on March 9, 1977, refusing to allow not only their Meatcutters, but also their Retail Clerk employees to work was submitted to expedited arbitration pursuant to the Collective Bargaining Agreement. In accordance with the terms of the submission, the arbitrator issued an award finding that A & P and Acme had locked out the Retail Clerks Union by closing their stores on March 9, in violation of the no lockout provision of the Retail Clerks Agreement with A & P and Acme.

The District Court in the 301 action brought by the Food Stores to set aside the arbitration award, overturned the arbitration award finding that the arbitrator had disregarded the intent of the parties in structuring the definition of the term "lockout" (which is undefined in the Contract) and on the ground that the award was in manifest disregard of the law because of what the Court considered the inappropriateness of that definition.

On appeal, the United States Court of Appeals for the Third Circuit reversed the decision of the District Court, reinstating the

award of the arbitrator, recognizing that the term "lockout" was not defined in the Collective Bargaining Agreement between the parties and that the interpretation and definition of that term was the issue submitted to the arbitrator for determination. There was at no time in any stage of these proceedings any agreement between the parties either by stipulation or otherwise, as to the definition of the term "lockout" or that a finding of "offensive employer action" was required before the arbitrator could rule that the action of the Petitioner herein constituted a lockout.

Since this failure of the Court below to enforce this alleged understanding between the parties as to the meaning of this term in reversing the District Court and upholding the award of the arbitrator is such an essential part of the Petition in this case, it must be categorically pointed out that throughout the proceedings before the arbitrator, it was the position of the Unions that the Contract language was clear and unequivocal and that it allowed for no exceptions or defenses. The Unions steadfastly held to their position that as long as the Employers denied work from their employees covered under the Collective Bargain-

ing Agreement, that that was sufficient to constitute a lockout under the Contract requiring an award in favor of the Unions without regard to a determination as to whether there was any offensive or defensive conduct on the part of the Employer against the affected employees. The arbitrator in fact held in a well reasoned decision, supported by not only logical interpretation of the Collective Bargaining Agreement, but by reliance on other arbitration decisions, that the withholding of work from the Retail Clerks was in fact a lockout in violation of the Contract between the parties.

All arguments concerning the existence of some agreement or understanding between the parties as to the definitional elements of the term "lockout" which give rise to the Petitioner's argument that the court below failed to look to the intention of the parties in deciding the case, were considered by the Court of Appeals and were rejected. The Court of Appeals found essentially that there was no understanding between the parties, either contractually or otherwise, as to the definition of the term and that it was that definition or interpretation which was the issue which the parties had in fact submitted to the arbitrator for determination.

It is respectfully submitted that it was that determination and the upholding of that determination by the Court of Appeals, which is the basis for this Petition and not any dispute or conflict with decisions of other Courts of Appeals.

REASONS FOR DENYING THE WRIT

I. WHERE THERE IS IN FACT NO CONFLICT BETWEEN DECISIONS OF COURTS OF APPEALS ON THE ISSUE OF ENFORCEMENT OF ARBITRATION AWARDS, AND WHERE IN FACT THE COURT BELOW FOLLOWED STANDARDS ESTABLISHED BY THIS COURT FOR THE JUDICIAL REVIEW OF LABOR ARBITRATION AWARDS, THERE IS NO ISSUE PRESENTED TO THIS COURT APPROPRIATE FOR REVIEW.

The Petitioner in this case has attempted to fabricate a reviewable issue by attempting to convince this Court that the arbitrator failed to adhere to the alleged mutual intent of the parties with regard to the definition of the term "lockout" and by alleging that the approach of the Court of Appeals in reviewing that award was based on a standard of review which is in conflict with standards annunciated by this Court and by other Courts of Appeals.

As we have indicated above, the alleged agreement between the parties as to the definitional elements of a lockout, never in fact existed in this case and was in actuality the issue submitted to the arbitrator for determination. This was precisely the finding of the Court of Appeals in its decision, when, following the standards of judicial review which are applied in the Third Circuit, it upheld the determination of the arbitrator in this case that there had in fact been a lockout in violation of the Collective Bargaining Agreement between the parties.

If there had been such an agreement, there is no question but that the failure of the arbitrator to adhere to that understanding would have been in clear violations of the principles annunciated in the Enterprise Wheel and Car Corp. case, supra, requiring the setting aside of that award by the Court of Appeals for the Third Circuit in accordance with its own standards for review of labor arbitration awards as enunciated in the case of Ludwig Honold Manufacturing Company vs. Fletcher, 405 F.2d 1123 (3rd Cir. 1969). That factual dispute, however, was effectively put to rest by the decision of the Court below in essentially finding that there

had been a lockout in violation of the Contract between the parties, drew his decision from the "essence" of the Contract as required by Enterprise Wheel and Car Corp. case standards.

A review of Supreme Court Rule 19 establishes that unless a case raises issues which essentially meet the criteria contained in that Rule (even though the reasons stated in the Rule are neither controlling or fully measuring the Court's discretion), would not give rise to issues appropriately reviewable by this Court. The determination of that factual dispute was appropriately before the Federal Courts below and was decided finally and properly by the Court of Appeals. Had they decided the factual issue to the contrary, there is no question but that under the Third Circuit standards, the District Court decision to set aside would have been upheld just as those same standards required the upholding of the award when the factual dispute was resolved in favor of a finding that there was no agreement between the parties on the issue in question. Such a dispute was appropriately before the Federal Courts below and respectfully, does not raise an issue for review by this Court.

The only remaining basis which the Petitioner presents to this Court as justification for the grant of the Petition, is the allegation that the standard enunciated by the Court of Appeals in this case in reviewing labor arbitration awards is in conflict with standards utilized in other Courts of Appeals. Essentially, the Third Circuit in fulfilling its obligations of review of labor arbitration awards, pursuant to the guidelines established by this Court in the Enterprise Wheel case, formulated a standard of review in the Ludwig Honold Manufacturing Company case, supra, which has been followed by this Circuit faithfully since its inception. That standard generally states that if the contractual interpretation by the arbitrator can be derived in any rational way from the agreement, viewed in the light of its language, context and any other indicia of the parties' intention, the award must be upheld. Further, the Court's guidelines establish that only where there is a manifest disregard of the agreement, unsupported by principles of contract construction and the law of the shop may the award be set aside. Ludwig Honold Manufacturing Company, supra.

It is respectfully submitted that this standard fully complies with the guidelines established by this Court for review of labor arbitration awards, and is in essence the standard utilized universally by Federal Courts in dealing with these issues. In fact, virtually every Circuit has adopted standards similar to, if not exactly the same, as those of the Third Circuit with regard to judicial review of arbitration awards, all of which are consistent and are derived from the standards enunciated by this Court in the Enterprise Wheel and Car case, supra.[1]

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1. See I.U.E. vs. Peerless Pressed Metal Corp., 489 F.2d 768 (1st Cir. 1973); Saxis S.S. Co. vs. Multifacs International Traders, Inc., 357 F.2d 577 (2d Cir. 1967); International Union of District 50, United Mineworkers of America vs. Bowman Transportation, Inc., 421 F.2d 934 (5th Cir. 1970); Mogge vs. District 8 International Association of Machinists, 454 F.2d 510 (7th Cir. 1971); Barrett vs. Manufacturer's Railway Company, 453 F.2d 1305 (8th Cir. 1972); Holly Sugar Corp. vs. Distilling Rectifying, Wine and Allied Workers, International, 412 F.2d 899 (9th Cir. 1969); Amalgamated Butcher Workmen's Local No. 641 vs. Capitol Packing Co., 413 F.2d 688 (10th Cir. 1969); Washington-Baltimore Newspaper Guild, Local 35 vs. Washington Post Co., 442 F.2d 1234 (D.C. Cir. 1971).

It is submitted that there are in fact no conflicts on this matter of law in any of the Circuits and specifically, no conflicts between the standards utilized in the Third Circuit and those utilized in the Fourth and Sixth Circuits. In fact, a review of the decisions cited by the Petitioner in an attempt to establish this conflict confirms not that there is a conflict, but rather that there is a universal standard applied in all the Circuits and that any differences in application are based merely on the factual situations in the cases before the Courts for review as opposed to any differences in the legal standards utilized by the Courts in reaching their decisions.

In fact, it must be noted that in at least two (2) of the Sixth Circuit cases cited by the Petitioner as examples of the alleged conflict in the Circuits, both cite a Third Circuit case, N.F. & M. Corp. vs. United Steelworkers, 524 F.2d 756 (3rd Cir. 1975)., in support of their decisions in those cases. Storer Broadcasting Co. vs. AFTRA, 600 F.2d 45 (6th Cir. 1979); Detroit Coal Co. vs. Machinists Lodge 82, 594 F.2d 575 (6th Cir. 1979).

Further, the approach of the Courts in all of the other decisions cited in both the Fourth

and Sixth Circuits, apply the same Enterprise Wheel standards in the judicial review of those arbitration awards as are applied in the Third Circuit in the Ludwig Honold case and its progeny. It is submitted that had factual situations such as those in the Fourth and Sixth Circuits cases been presented to the Third Circuit, that under the Ludwig Honold test, similar results would have been reached.

Since Petitioner has not established a real conflict among the Circuit Courts with regard to the standards to be applied in the judicial review of arbitration awards, it is respectfully submitted that the criteria of Rule 19 have not been met and that certiorari should not be granted in this case.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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